

BEFORE THE FEDERAL ELECTION COMMISSION

2015 SEP 30 PM 4: 17

In the Matter of)
)
MUR 6728)
Mike McIntyre for Congress)
and Marion D. Thompson as Treasurer)
Mike McIntyre)
)
)

DISMISSAL AND **CELA**
CASE CLOSURE UNDER THE
ENFORCEMENT PRIORITY
SYSTEM

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, the Commission uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue. These criteria include, without limitation, an assessment of the following factors: (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), and developments of the law. It is the Commission's policy that pursuing relatively low-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss cases under certain circumstances. The Office of General Counsel has scored MUR 6728 as a low-rated matter and determined that it should not be referred to the Alternative Dispute Resolution Office.¹ For the reasons set forth below, the Office of General Counsel recommends that the Commission exercise its prosecutorial discretion to dismiss MUR 6728.

The Complainant in this matter, Mike Rusher, on behalf of the North Carolina Republican Party, alleges that Mike McIntyre and Mike McIntyre for Congress and Marion D.

¹ The EPS rating information is as follows: Complaint Filed: March 18, 2013. Response from Mike McIntyre for Congress Filed: April 9, 2013. Response from Mike McIntyre Filed April 10, 2013.

1 Thompson, in her official capacity as treasurer, (collectively, the "Committee")² failed to file an
2 amended Statement of Organization, FEC Form 1, within ten days of the filing of McIntyre's
3 2014 Statement of Candidacy, in violation of the Act and Commission regulations. Compl. at 1.
4 Complainant states that McIntyre filed a Statement of Candidacy, FEC Form 2, on January 24,
5 2013, designating Mike McIntyre for Congress as his principal campaign committee for the 2014
6 election cycle. *Id.* at 1, 2. Complainant asserts that "this designation triggered the Committee's
7 obligation to file a Statement of Organization" within 10 days. *Id.* at 2. Complainant contends
8 that the Committee has not amended its Statement of Organization since January 18, 2007. *Id.*

9 Complainant also alleges that the Committee failed to itemize \$61,804.82 in transfers
10 from McIntyre 2012 Victory Fund ("Victory Fund").³ *Id.* Specifically, Complainant states that
11 the Committee reported three transfers from the Victory Fund on its 2012 Year End report, but
12 "failed to itemize those receipts as individual contributions from the original contributors." *Id.*

13 In its Response, the Committee states that "there was no need" to file an amended
14 Statement of Organization because there have been "no changes to [Mike] McIntyre for
15 Congress in its designation as the principal campaign committee." Committee Resp. at 1. The
16 Committee states that it was organized in 1996 as the "primary campaign committee" of Mike
17 McIntyre, and it has remained active as such since its inception. *Id.*

² The Committee is the principal campaign committee of Congressman Mike McIntyre, representative of North Carolina's 7th Congressional District since 1997. McIntyre filed a Statement of Candidacy on January 24, 2013 for the 2014 election cycle; however, on January 8, 2014, McIntyre announced he would be retiring at the end of his 2012 term and would not seek reelection in 2014. See <http://mcintyre.house.gov/index.php/newsroom/press-releases/859-mcintyre-to-retain-at-end-of-congressional-term>.

³ Victory Fund filed its initial Statement of Organization on November 9, 2012, and made its first transfer to the Committee on November 15, 2012. Victory Fund filed a Termination Report on February 13, 2013, and was approved for termination on February 21, 2013. See Victory Fund Termination Report, dated February 13, 2013, and Termination Approval, dated February 21, 2013.

1 Regarding the joint fundraising allegation, the Committee avers that the allocation of the
2 joint fundraising proceeds and expenses was based on a "prearranged agreement" between the
3 Committee and the Victory Fund, in accordance with Commission regulations. *Id.* The
4 Committee states that the Victory Fund distributed the net joint fundraising proceeds at issue in
5 three lump sum payments, and that the Committee itemized the receipts as distributions, not
6 contributions, as required by Commission regulations. *Id.* Congressman McIntyre responded
7 that the Complainant's allegations address the Committee and not himself, and that he has no
8 knowledge or reason to believe that any non-compliance occurred. McIntyre Resp. at 1,

9 The Committee's filings disclose four transfers from the Victory Fund during the 2012
10 election cycle, totaling \$64,802.82: \$3,000 on November 15, 2012; \$10,000 on November 28,
11 2012; \$11,800 on December 5, 2012; and \$40,004.82 on December 19, 2012. In addition, the
12 Committee's 2013 filings disclose two additional transfers from the Victory Fund, totaling
13 \$15,000: \$2,000 on February 7, 2013; and \$13,000 on February 12, 2013. All of these receipts
14 were reported under FEC Form 3 Line 15 as "Other Receipts" for "2012, Recount." See Mike
15 McIntyre for Congress 2012 30 Day Post General Report at 88; 2012 Year End Report at 7; and
16 2013 April Quarterly Report at 35, 36.

17 Similarly, the Victory Fund's filings disclose six transactions to the Committee on the
18 same dates and in the same amounts with the descriptions, "transfer for recount expenses" or
19 "transfer to authorized committee." See McIntyre 2012 Victory Fund 2012 30 Day Post General
20 Report at 16; 2012 Year End Report at 11; and 2013 Termination Report at 6.

21 Commission regulations require that within 15 days of an individual becoming a
22 candidate under 11 C.F.R. § 100.3, he or she must designate a principal campaign committee.
23 11 C.F.R. § 101.1(a). Within 10 days after it has been designated by the candidate, the principal

1 campaign committee must register with the Commission by filing a Statement of Organization
2 (FEC Form 1). 11 C.F.R. § 102.1. Any change in information previously submitted in a
3 statement of organization shall be reported no later than 10 days after the date of the change.
4 52 U.S.C. § 30103(c). When a candidate files a Statement of Candidacy (FEC Form 2) in a new
5 election cycle, the candidate may either redesignate his or her previous campaign committee, or
6 designate a new principal campaign committee. If the candidate redesignates an existing
7 committee, the committee need only amend its Statement of Organization within 10 days to
8 reflect any new information. *See* 11 C.F.R. § 102.2(a)(2).⁴

9 A candidate's principal campaign committee is required to amend its FEC Form 1
10 (Statement of Organization) if it participates with a joint fundraising committee, and is required
11 to provide the name and address of the joint fundraising representative, and to state the name and
12 address of the depository institution holding the joint fundraising account, if that account is
13 different from the depository named on its current FEC Form 1. *See* 11 C.F.R. § 102.17. In
14 addition, each federal candidate participating in the fundraiser must amend FEC Form 2
15 (Statement of Candidacy) to designate the joint fundraising representative as an authorized
16 candidate committee. *See* 11 C.F.R. §§ 102.2(a)(2), 102.17(a)(1)(i), (b)(1), (b)(2), and (c)(3).
17 The affiliated principal campaign committee is required to report the net proceeds received from
18 the joint fundraising committee as a transfer-in on Schedule A supporting Line 12 of Form 3.
19 Additionally, the affiliated candidate committee must provide a memo Schedule A itemizing its
20 share of gross receipts received through the joint fundraising committee as contributions from
21 original contributors. 11 C.F.R. § 102.17(c). The memo schedule should itemize each individual

⁴ According to the Committee, there was no new information to report concerning its status, address, treasurer, or banking institution. Therefore, as to these specific items, no new Statement of Organization would have been required.

1 who has contributed an aggregate in excess of \$200 during the election cycle to the committee,
2 and provide the amount of unitemized contributions received. The memo schedule should also
3 itemize the committee's share of all contributions from political committees, regardless of
4 amount. *Id.*

5 The available information and FEC records indicate that when the Committee began
6 participation with the Victory Fund, it did not amend its Statements of Candidacy or
7 Organization, as required when a principal campaign committee participates with a joint
8 fundraising committee. Although the Committee did ultimately report all funds distributed to it
9 by the Victory Fund, it did not provide a memo Schedule A itemizing its share of gross receipts
10 received through the Victory Fund as contributions from original contributors, as required under
11 Commission regulations. Also, while the Victory Fund reported the disbursements to the
12 Committee as "transfers," the Committee incorrectly reported the distributed funds under FEC
13 Form 3 Line 15 as "Other Receipts" from the Victory Fund, instead of reporting the funds as a
14 "transfer-in" on FEC Form 3 Line 12.

15 Accordingly, in light of the terminated status of the Victory Fund and the fact that the
16 funds at issue were reported by the Committee (albeit in the wrong area of its disclosure reports),
17 the Office of General Counsel does not believe further enforcement action is necessary and
18 recommends that the Commission dismiss this matter pursuant to its prosecutorial discretion.
19 *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the Office of General Counsel
20 recommends that the Commission approve the attached Factual and Legal Analysis and the
21 appropriate letters, and close the file.

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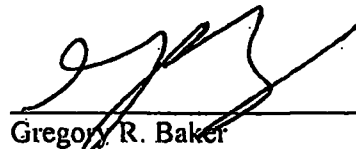
RECOMMENDATIONS

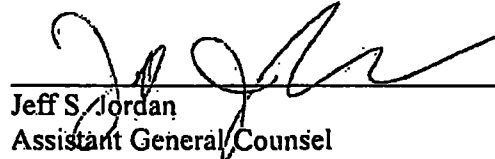
1. Dismiss the allegations that Mike McIntyre and Mike McIntyre for Congress and Marion D. Thompson, in her official capacity as treasurer, violated the Act and Commission regulations, pursuant to the Commission's prosecutorial discretion under *Heckler v. Chaney*, 470 U.S. 821 (1985);
2. Approve the attached Factual and Legal Analysis and the appropriate letters; and
3. Close the file.


Daniel A. Petalas
Acting General Counsel

9/30/15
Date

BY


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